

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No. 04-44955-RJK

Chapter 13

Jason R. Wendel,

Debtor(s).

***NOTICE OF HEARING AND  
MOTION FOR RELIEF FROM CO-DEBTOR STAY***

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TO: Debtor(s) and Attorney for Debtor(s); Jasmine Keller, Chapter 13 Trustee; U.S. Trustee; and other parties in interest.

1. Wells Fargo Bank, N.A., an unsecured creditor of Debtor(s), by its undersigned attorney, moves the Court for the relief requested below, and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at **2:00 pm on Thursday, October 28, 2004**, before the Honorable Robert J. Kressel, in Courtroom No. 8 West, at the 300 South Fourth Street, Minneapolis, Minnesota 55415.

3. Any response to this motion must be filed and delivered not later than Monday, October 25, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than Tuesday, October 19, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This motion arises under 11 U.S.C. § 1301 and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-3. Wells Fargo Bank, N.A. seeks relief from the co-debtor stay of 11 U.S.C. § 1301.

5. The petition commencing this Chapter 13 case was filed on September 3, 2004 and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C.

§§ 1334 and 157(a), Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding.

6. A copy of Wells Fargo Bank, N.A.'s agreement with Debtor(s) (the "Contract") is attached hereto as Exhibits A and incorporated herein by reference. Robert Wendel is a codebtor on the Contract.

7. The Chapter 13 Plan does not provide for payment in full of Wells Fargo Bank, N.A.'s claim. Presently, a delinquency under the Contract exists in an amount totaling at least \$1,871.31. The plan pays approximately 3% to unsecured creditors.

8. The failure of the Debtor(s) to provide Wells Fargo Bank, N.A. with full payment of the amount due and owing under the contract constitutes cause, within the meaning of 11 U.S.C. §1301(c)(2), entitling Wells Fargo Bank, N.A. to relief from the co-debtor stay to the extent that the Plan filed by Debtor(s) proposes not to pay such claim.

9. Wells Fargo Bank, N.A. requests that any order modifying the co-debtor stay be effective immediately as allowed under Federal Bankruptcy Rule 4001(a)(3).

10. If testimony is necessary as to any facts relevant to this motion, P. Christofferson, or some other representative of Movant, will testify on behalf of Wells Fargo Bank, N.A..

11. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

WHEREFORE, Wells Fargo Bank, N.A. respectfully moves the Court for an order: (i) modifying the co-debtor stay of 11 U.S.C. § 1301 so as to permit Wells Fargo Bank, N.A. to commence collection activities against the co-debtor, Robert Wendel, (ii) finding that Bankruptcy Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure is not applicable, and (iii) granting such other relief as may be just and equitable.

Dated: September 28, 2004

STEWART, ZLIMEN & JUNGERS

By /s/ Bradley J. Halberstadt  
Bradley J. Halberstadt (#215296)  
Attorneys for Movant  
430 Oak Grove Street, Ste. 200  
Minneapolis, Minnesota 55403  
(612) 870-4100

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Chapter 13 Case

Jason R. Wendel

Bky. No. 04-44955-RJK

Debtor(s).

Affidavit of Pam Christofferson

I, Pam Christofferson, of Wells Fargo Bank, N.A., declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

1. Wells Fargo Bank, N.A. has a security interest in the following (the "Collateral"):  
no. e.
2. \$1,873.31 is the outstanding balance under the contract as of September 28, 2004.
3. \$1,873.31 is the amount of the existing delinquency under the contract.
4. is the fair market value of the Collateral.
5. Appropriate insurance has been verified.
6. 1871.31 is the payment default under the Chapter 13 Plan.

Further your affiant sayeth not.

Dated: 9/21/2004

Pam Christofferson

Pam Christofferson  
Bankruptcy Specialist  
Wells Fargo Bank, N.A.

Subscribed and sworn to before me on  
September 28, 2004

Jennifer Hartman  
Notary





# Norwest Reserve® Credit Agreement

Borrower's name <b>JASON R. WENDL</b>		Co-borrower's name <b>ROBERT W. WENDL</b>	
Bank's name <b>NORWEST BANK - MINNESOTA NATIONAL ASSOCIATION</b>		Date <b>10/20/1998</b>	Account number <b>3004915801</b>

In this agreement, I, ME and MY refer to each borrower and co-borrower who signs this agreement. YOU and YOUR refer to the Bank named above. This agreement covers my Norwest Reserve line of credit with you, which is a revolving line of credit.

I understand that the date shown above is the date this agreement is prepared by you. This agreement is effective and is considered made when you approve it, and you accept it after I have properly signed it.

## Norwest Reserve® Line

This line of credit provides overdraft protection for my checking account # 397336536. This means that whenever I overdraw this checking account by writing a check, by using my approved cash card, or by accessing my checking account(s) through some other means which you have agreed, in writing, to honor, or if my checking account becomes overdrawn for any other reason, you will automatically give me an initial loan of \$ 300 and thereafter as many as \$ 300 as is needed to cover my overdraft. (If the amount available to borrow on my line of credit is less than this regular automatic loan amount, only the Minimum Loan Amount (shown below) will be advanced, subject to my credit limit.)

I also may obtain a loan from this line of credit in person, by phone, or by using any special device you have given me. The loan must be at least \$ 0 ("Minimum Loan Amount").

Overdraft protection loans will be deposited in my checking account. You will have no obligation to give me a loan if my checking account has been closed.

## Credit Limit

My Norwest Reserve® is a revolving line of credit. My credit limit is \$ 1,812. You do not have to give me any loan that would bring my unpaid loan balance over that limit. If you do make such a loan, any unpaid loan balance in excess of my credit limit ("Overline Amount") will be due with my next payment. I promise to pay you, when due, the unpaid loan balance, together with finance charges and other charges due on this line of credit.

## Finance Charges

A finance charge begins to accrue on the day each loan is made. You will charge me a FINANCE CHARGE at a daily periodic rate of 0.043315 % on my unpaid loan balance at the end of each day. This corresponds to an ANNUAL PERCENTAGE RATE of 15.80 %.

My finance charge for each monthly billing cycle is figured by multiplying my unpaid loan balance at the end of each day in the current billing cycle by the applicable daily periodic rate and then adding the results together. My unpaid loan balance at the end of each day will reflect loans, payments and credits made that day.

You will also charge me a transaction charge of \$ 0.00, which will be reflected as an additional FINANCE CHARGE for each loan made on this line of credit. This transaction charge will be assessed at the time each loan is made.

## Monthly Payments

To repay my loans, you will automatically charge my account with you (number 397336536) for the regular minimum monthly payment(s) due plus any annual fee due. If this account does not have enough money in it to make this automatic payment, you may, but are not required to, make me a loan from this line of credit (in the automatic loan amount) to make the payment. (Any other charges due must be paid separately. You may charge this account for these other charges if they are not paid.)

My regular minimum monthly payment will be calculated on the day my monthly statement is prepared and will be due on the date shown in that statement (which will be approximately 15 days after the day the statement is prepared).

Each regular minimum monthly payment will be the following amount (plus any Overline Amount):

- ☐ a fixed amount of \$           .
- ☒ a payment that is equal to the greater of \$ 25.00 or 2.5 % of my unpaid loan balance.

Bank Use Only: 00925 26462 10/20/1998 14:25

**Other Charges**  
I agree to pay the following other charges, which are described in greater detail on the back side of this agreement:

Over-the-credit-limit fee	\$ <u>0.00</u>
Annual fee	\$ <u>20.00</u>
Return payment fee	\$ <u>0.00</u>
Stop payment fee	\$ <u>0.00</u>

I also agree to pay a late fee if any regular minimum monthly payment is not paid in full within            days of its scheduled due date. The late fee will be equal to:

- ☒ \$ 0.00
- ☐            % of the unpaid amount of the scheduled regular minimum monthly payment.
- ☐ the            of \$            or            % of the unpaid amount of the scheduled regular minimum monthly payment.
- ☐ No late fee will be assessed.

## Security Interest

There is no security for loans made under this line of credit other than the right of setoff, if any, described on the reverse side.

## Credit Insurance

I am not required to buy credit insurance. I may choose to buy credit life or credit life and credit disability (accident and health) insurance from you. Credit life insurance will repay my Norwest Reserve® loans if I die, subject to the terms of the insurance certificate. Credit disability insurance will repay my Norwest Reserve® loans if I become disabled, subject to the terms of the insurance certificate.

The daily rate for this credit insurance and the corresponding cost per \$100 of my average daily balance each month are shown below:

	Single Credit Life Insurance	Joint Credit Life Insurance	Single Credit Life and Disability Insurance
Daily Rate	<u>0.002005</u> %	<u>0.003353</u> %	<u>0.007430</u> %
Cost per \$100	<u>06.1</u> cents	<u>10.2</u> cents	<u>22.6</u> cents

I want to purchase the following credit insurance:

- ☒ Single Life Insurance
- ☐ Joint Life Insurance
- ☐ Single Life and Disability Insurance
- ☐ No Insurance

Borrower's signature 	Birthdate <b>07/21/1977</b>
Co-borrower's signature 	Birthdate <b>07/29/1952</b>

You may change the terms of this agreement in accordance with the Changes in Terms provisions on the back side of this agreement.

## Signatures of Borrower and Co-borrower

I received and read a completed copy of this agreement before signing it. I understand and agree to all its terms. I also understand that the reverse side contains additional terms and important information regarding my rights to dispute billing errors.

Borrower's signature 	Date <b>10-20-98</b>
Co-borrower's signature 	Date <b>10-20-98</b>

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No.04-44955-RJK

Chapter 13

Jason R. Wendel,

Debtor(s).

***MEMORANDUM IN SUPPORT OF  
MOTION FOR RELIEF FROM CO-DEBTOR STAY***

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Wells Fargo Bank, N.A. submits this memorandum of law in support of its motion for relief from the co-debtor stay in the above-entitled matter.

FACTS

Wells Fargo Bank, N.A. is an unsecured creditor in this case. The balance due under the contract with Debtor(s) and Robert Wendel is \$1,871.31 as of the date hereof. The Chapter 13 Plan does not provide for payment in full of Wells Fargo Bank, N.A.'s claim. The plan proposes payment to unsecured creditors of approximately 3%.

ARGUMENT

Pursuant to Section 1301(c)(2) of the Bankruptcy Code, relief from the co-debtor stay shall be granted upon request of a creditor if the Chapter 13 Plan does not provide for the payment in full of such claim. Here, payment in full under the contract has not been proposed by the Debtor(s) under the Chapter 13 Plan and Wells Fargo Bank, N.A. is entitled to relief from the co-debtor stay to the extent that the Plan filed by Debtor(s) proposes not to pay such claim.

### CONCLUSION

For all the reasons set forth herein, Wells Fargo Bank, N.A. is entitled to an order terminating the automatic stay of 11 U.S.C. § 1301 to the extent that the Plan filed by Debtor(s) proposes not to pay such claim and authorizing it to commence collection activities against the co-debtor, Robert Wendel.

Dated: September 28, 2004

STEWART, ZLIMEN & JUNGERS

By /e/ Bradley J. Halberstadt  
Bradley J. Halberstadt (#215296)  
Attorneys for Movant  
430 Oak Grove Street, Ste. 200  
Minneapolis, Minnesota 55403  
(612) 870-4100

U.S. BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Jason R. Wendel

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-44955-RJK

Bradley J. Halberstadt, an agent of Stewart, Zlimen & Jungers, attorney(s) licensed to practice law in this court, with office address of 430 Oak Grove Street, Ste. 200, Minneapolis, Minnesota 55403, declares that on the date set forth below, I served the annexed **Notice of Hearing and Motion For Relief From Stay** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota addressed to each of them as follows:

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United States Trustee  
Suite 1015  
300 South 4th Street  
Minneapolis, MN 55415

(Attorney for Debtor(s))  
Jeffrey M. Bruzeck  
Prescott & Pearson  
443 Old Hwy 8 Suite 208  
New Brighton, MN 55112

(Trustee)  
Jasmine Keller  
12 S 6th Street Suite 310  
Minneapolis, MN 55402

(Debtor(s))  
Jason R. Wendel  
729 79th St.  
Lino Lakes, MN 55014

(Co-Obligor)  
Robert Wendel  
18357 Tulane St NE  
Forest Lake, MN 55025

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And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: September 28, 2004

Signed: /e/ Bradley J. Halberstadt  
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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Case No. 04-44955-RJK  
Chapter 13

Jason R. Wendel,

Debtor(s).

***ORDER GRANTING  
MOTION FOR RELIEF FROM CO-DEBTOR STAY***

The above-entitled matter came before the Court for hearing on Thursday, October 28, 2004 at the motion of Wells Fargo Bank, N.A. seeking relief from the co-debtor stay of 11 U.S.C. § 1301.

Appearances were noted in the Court's record. Based upon the proceedings on said date, the statements of counsel, and all of the files and records herein, the Court now finds that cause exists entitling Wells Fargo Bank, N.A. to the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED that the co-debtor stay of 11 U.S.C. § 1301 is immediately terminated to the extent that the Plan filed by Debtor(s) proposes not to pay such claim to Wells Fargo Bank, N.A., and Wells Fargo Bank, N.A. is authorized to commence collection activities against the co-debtor, Robert Wendel, to such extent. Notwithstanding Fed R. Bankr. P. 4001(a)(3), this order is effective immediately.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Robert J. Kressel  
United States Bankruptcy Judge